

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B. CIVIL WRIT PETITION NO. 364/2005
(Bhawani Singh Vs. State of Rajasthan & Ors.)

Date of Order : 01/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.K. Singhal for the petitioner.
Mr. B.L.Tiwari, Dy. Govt. Advocate for the State.

BY THE COURT:-

Reportable

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to appoint him on compassionate ground.

I have heard learned counsel for the parties.

The petitioner's father Shri Diggar Singh while in service of the Irrigation Department of the respondent State holding the post of Chowkidar, expired on 16.7.1999. The deceased Government servant is survived by his three sons namely Narain Singh, Prem Singh and present petitioner Bhawani Singh. The petitioner sought appointment under the

Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (for short 'the Rules of 1996' hereinafter) and filed an application on 16.8.1999. The application of the petitioner was moved through various channels vide Annex.2 and Annex.3. However, the petitioner was denied the appointment under the Rules of 1996 on the ground that one of the son of deceased Government servant and brother of the petitioner namely Narain Singh has been permanently employed in PHED, Sub Division, Rawatsar and therefore, in view of Rule 5 of the Rules of 1996, the petitioner was not found entitled for compassionate appointment.

A reply to the writ petition has been filed. In para 9 of the reply, it has been specifically averred that Narain Singh son of the deceased Government servant and the brother of the present petitioner is employed permanently in PHED, Sub Division, Rawatsar which is State Government Department and this fact has not been controverted.

Learned counsel for the petitioner has relied on a decision of Division Bench of this Court in State of Rajasthan and Ors. Vs. Smt. Kant Devi and Ors. D.B.Civil Special Appeal (Writ) No.549/03 (DR.J.) wherein this Court held that employment on work charge basis does not fall in the category of employment

on regular basis nor there is any such assertion on the part of respondents that deceased Jawahar Lal was in employment of the State on regular basis. Rule 5 could not have been invoked in the case of the petitioner when one of the son of deceased Jawahar Lal was only employed on work charge establishment and not on regular basis.

The decision relied on by learned counsel for the petitioner is of no help to the petitioner as the State came with a specific case that one of the son of the deceased Government employee and brother of the petitioner is employed permanently in PHED, Sub-Division, Rawatsar. More so, the deceased died in the year 1999 and now in the year 2007 the situation of harness at any rate would not continue and it cannot be said that the petitioner who in the year 2005 was of 35 years of age and now 37 years of age, has no source of income or is jobless.

It is settled legal proposition that employment on compassionate ground is not a vested right as has repeatedly been held by the Hon'ble Supreme Court. In fact, every appointment in public office must be made in strict adherence to the mandatory requirement of Articles 14 and 16 of the Constitution. An exception to provide employment on compassionate ground has been carved out in order to remove

the financial constraints on the grieved family which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family the source of livelihood. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. Thus, the consistent view taken by the Hon'ble Supreme Court had been that compassionate employment cannot be claimed as a matter of right, not being the vested right.

In *Martin Burn Ltd. Vs. Corporation of Calcutta*, AIR 1966 SC 529 Hon'ble Supreme Court held that a result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what is considered a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.

In *Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs.)* (1994) 2 SCC 718 held that the courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which cannot be put aside while

ordering compassionate appointment.

In Haryana State Electricity Board Vs. Naresh Tanwar & Anr. Vs. Hakim Singh, JT 1997 (8) SC 332, the Hon'ble Apex Court observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, an ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

Similarly, in Haryana State Electricity Board Vs. Naresh Tanwar & Anr., (1996) 8 SCC 23, the Hon'ble Apex Court directed the applicants involved therein to apply for employment on compassionate ground "by giving full details of the family circumstances and the economic conditions."

In Director of Education (Secondary) & Anr. Vs. Pushpendra Kumar & ors., (1998) 5 SCC 192, the Apex Court has observed that the object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment.

In S. Mohan Vs. Government of Tamil Nadu & Anr., 1998 SCC (L&S) 1231, the Hon'ble Apex Court, reiterating the view taken in Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138, held that the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

A Division Bench of this Court, in Narendra Singh Vs. State of Rajasthan & ors., 1998 (1) RLW 666, while dealing with the issue, observed that the object and purpose of providing the employment on compassionate ground is to redeem the family which has lost its bread-earner and not to create any new mode of recruitment for dependent of the government servant and it cannot be claimed as a vested right.

In Sanjay Kumar Vs. State of Bihar, JT 2000 (10) SC 156, the Hon'ble Supreme Court again reiterated that the purpose of the Rules providing for compassionate employment is only to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood, but such an appointment cannot be held as if a **reservation** for the dependents of the deceased Government servant who died in harness.

Thus, in a case where employment on compassionate ground can be refused, if other member of the family is already in service, the right cannot be held to be a vested right.

Rule 5 of the Rules of 1996 reads as under :-

"5. Appointment subject to certain conditions.- When a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these Rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/ daughter of the deceased Government servant, is already employed on regular basis under the Central/ State Government or Statutory Board, Organisation/ Corporation owned or controlled wholly or partially by the Central/ State Government at the time of death of the Government servant.

Provided that this condition shall not apply where the widow seeks employment for herself."

Thus, from the plain reading of Rule 5 of the Rules of 1996, it is clear that the compassionate appointment in the Govt. service are to be considered subject to the conditions that employment under these Rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/ daughter of the deceased Government servant, is already employed on regular basis under the Central/ State Government or Statutory Board, Organisation/ Corporation owned or controlled wholly or partially by the Central/ State Government at the time of death of the Government servant.

In the instant case, it has not been controverted that

at the time of death of the Government servant, son of the deceased government servant namely Narain Singh was a permanent employee of the State Government employed in PHED, Sub-Division, Rawatsar and therefore, the petitioner was not entitled for compassionate appointment. However, proviso to Rule 5 provides that this condition shall not apply to the widow of the deceased Government servant, but in the instant case, the widow of the deceased Govt. servant has not applied for appointment on compassionate ground.

In the circumstances, therefore, it is not a fit case directing appointment on compassionate ground.

The writ petition has no force and it is therefore, dismissed. No order as to costs.

(H.R.PANWAR),J.

Rp